

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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GARY A. CHRISTIANSEN,

Petitioner,

v.

Case No. 08-C-0763

DALE SCHMIDT, Washington County Sheriff,

Respondent.

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**ORDER**

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The petitioner, Gary Christiansen, who is currently incarcerated at the Washington County Jail, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition states that the petitioner was convicted of two counts of child pornography. The court previously granted the petitioner's motion to proceed in forma pauperis.

By his petition, the petitioner challenges the judgment of conviction on the following grounds: 1) he did not intentionally put pornography on his computer; 2) his Fourth Amendment rights were violated; 3) he was not allowed to question the witnesses; and 4) he was unlawfully placed on a probation hold as of May 7, 2008.

United States Magistrate Judge Patricia J. Gorence previously concluded that the petitioner's petition for a writ of habeas corpus contained both exhausted and unexhausted claims. Therefore, pursuant to Rose v. Lundy, 455 U.S. 509, 510 (1982), Judge Gorence left the petitioner with the choice of either not pursuing his petition until he had exhausted all of his claims in state court or proceeding only with

his exhausted claims and voluntarily dismissing his unexhausted claims. On October 14, 2008, the petitioner filed a motion to dismiss the unexhausted claim, the fourth ground of his petition. The petitioner's motion will be granted.

Accordingly, based on the foregoing and Judge Gorence's previous order, the court concludes that summary dismissal under Rule 4, Rules Governing Habeas Corpus Cases of the remaining three grounds in his petition, is not appropriate since it does not plainly appear from "the face of the petition" that the petitioner is not entitled to relief. Consequently, the respondent will be called upon to serve and file an answer, motion or other response to the petition for a writ of habeas corpus. After the respondent's answer, motion or other response has been served and filed, the court will enter orders as necessary to facilitate the orderly progression of the action to disposition.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the petitioner's motion to dismiss his unexhausted claim, the fourth ground in his petition, be and hereby is **GRANTED**.

**IT IS FURTHER ORDERED** that the respondent be and hereby is directed to serve and file an answer, motion or other response to the petition for a writ of habeas corpus no later than **November 24, 2008**.

The petitioner is hereby notified that, from now on, he is required, under Fed. R. Civ. P. Rule 5(a), to send a copy of every paper or document filed with the court to the respondent or the respondent's attorney. The petitioner should also retain a

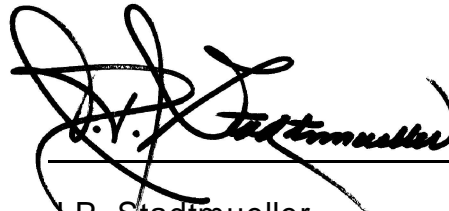
personal copy of each document. If the petitioner does not have access to a photocopy machine, the petitioner may send out identical handwritten or typed copies of any documents. The court may disregard any papers or documents which do not indicate that a copy has been sent to each respondent or to the respondent's attorney.

**IT IS FURTHER ORDERED** that the Clerk of Court shall send a copy of this order and the file contents via the United States mail to Gregory M. Weber, Assistant Attorney General, Wisconsin Department of Justice, Office of Attorney General, P. O. Box 7857, Madison, Wisconsin 53701.

**IT IS ALSO ORDERED** that a copy of this order shall be mailed to the respondent, Dale Schmidt, at the Washington County Sheriff's Department located at 500 Schmidt Road, West Bend, Wisconsin 53095.

Dated at Milwaukee, Wisconsin, this 23rd day of October, 2008.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller  
U.S. District Judge